IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

NOTICE OF MOTION NO.455 OF 2006
IN
WRIT PETITION NO.1704 OF 2005

Sterling Co-operative Housing Society Ltd. ..Petitioner.
Vs.
Municipal Corporation of Brihan Mumbai & Ors. ..Respondents.

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Mrs. A.R. Joshi for the BMC – Applicant in support of the Motion.
Ms. Rupali Dixit i/b Maneksha & Sethana for the Petitioner.

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CORAM: DR. D.Y. CHANDRACHUD, J.

27th November, 2006.

P.C. :

This Motion has been taken out by the Municipal Corporation for modifying the interim order dated 16th January, 2006. By the order of this Court dated 16th January, 2006. the following interim relief was granted :

> "By way of interim relief, respondent Nos.1 to 4 shall not take any steps for recovery of the amount on the basis of the revised enhanced assessment if the petitioners file an undertaking in this Court within 4 weeks from today, that in the event this petition being dismissed and revised assessment sustained, as demanded by the Corporation for the years in question, the petitioners would pay to the respondents amount of revised enhanced assessment within 3 months from the date of decision on the petition, unless otherwise ordered by the higher Court."

The Notice of Motion has been taken out on the foundation of the judgment of the Division Bench dated 27th March, 2006 in **Municipal Corporation of Greater Mumbai v. Dalamal Tower Premises Co-operative Society Limited**[1] in which similar issue came to be decided in favour of the Municipal Corporation and the revised assessment was upheld. Against the judgment of the Division Bench a Special Leave Petition was filed before the Supreme Court under Article 136 of the Constitution. On 11th September, 2006 a Bench of Three Learned Judges of the Supreme Court granted leave to appeal and issued the following interim directions :

> "The recovery on the basis of revised enhanced assessment from the appellants is stayed subject to the condition that besides the undisputed amount, the appellants also deposit with the respondent- Corporation fifty per cent of the difference between the assessment and the revised enhanced assessment within a period of six weeks and also give an undertaking that in case the appeal is dismissed and revised assessment is upheld, the balance amount would be paid with interest at the rate of 6-1/4%. Likewise, the Principal Assessor and Collector, on behalf of the Commissioner and the Corporation, will file an undertaking that in case the appeals are allowed and revised assessment is set aside, fifty per cent of the payment made on the basis of the revised assessment would be refunded to the appellants with the same rate of interest i.e. 6-1/4%."

1 2006 (3) Bom. C. R. 557.

In view of the order that has been passed by the Supreme Court on 11th September, 2006 it is necessary and appropriate that interim orders of this Court in matters involving a similar issue must be consistent with the directions of the Supreme Court. In the circumstances, the interim order dated 16th January, 2006 is modified and instead and in place thereof the following interim directions shall operate during the pendency of the Petition :

The recovery on the basis of the revised enhanced assessment from the Petitioner is stayed subject to the condition that besides the undisputed amount the Petitioner also deposits with the Municipal Corporation 50% of the difference between the assessment and the revised enhanced assessment within a period of six weeks and also give an undertaking that in case the appeal is dismissed and the revised assessment is upheld, the balance amount would be paid at the interest of 6-1/4% per annum. Similarly, the Principal Assessor and Collector shall file an undertaking on behalf of the Commissioner and the Municipal Corporation, that in case the Petition is allowed and the revised assessment is set aside, 50% of the payment made on the basis of the revised assessment would be refunded to the Petitioner at the

same rate of interest viz. 6-1/4%. The Notice of Motion is accordingly disposed of.